IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8400 OF 2004

Pankaj Navinchandra Kothari .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents.

Mr.V.R.Shastry for petitioner

Mrs.J.S.Pawar, A.G.P. for respondents.

CORAM : A.P.SHAH AND

S.C.DHARMADHIKARI, JJ.

DATE : 2nd NOVEMBER 2004.

P.C.

1. Petitioner impugns an order passed by the Assistant Conservator of Forests, Pune Division, Pune, directing eviction of petitioner from the land being S.No.139/1, 139/6, 139/7, 139/8 and 139/9 situated at villege Pale, Taluka Maval, Dist.Pune. It is the grievance of the petitioner

that by the impugned order passed under Maharashtra Land Revenue Code, not only the petitioner has been directed to remove the alleged encroachment but he has also been directed to remove himself from the said land. It is his grievance that 10 days time has been granted under the impugned order to do the needful failing which the Assistant Conservator of Forest would remove the alleged encroachment and the expenses in that behalf would be recovered as arrears of land revenue from the petitioner.

2. It is not in dispute that the said land was purchased by the petitioner on or about 20th June 1994. It is his case that permission for construction of a forest house on part of the said land was granted by Additional Collector, Pune on 27th November 1995. It is petitioner's case that in pursuance of his application N.A. permission was granted for using the land as tourists complex.

3. On 1st March 2004, respondent No.2 served a notice under section 53 and 54 of the

Maharashtra Land Revenue Code for evicting the petitioner from the said land on the ground that non-forest activities have been carried out thereon. According to respondent No.2, the said land is private forest which vests in the State by virtue of the provisions of Maharashtra Private Forest (Acquisition) Act, 1975. In reply to the show cause notice, petitioner contended that he was unaware of the fact that the said land is a deemed reserve forest. Petitioner contended that under section 22A of the said Act powers are conferred on the authorities to restore forest land in appropriate cases and an opportunity be given to him to make an application in that behalf. Petitioner contended that he has not encroached upon the said land and expressed willingness to carry out a joint measurement. It appears that respondent No.2 was not satisfied with this explanation and threatened to proceed with the proceedings for removal of encroachment and eviction of petitioner from the said land. It appears that an order was passed to this effect by him.

4. Be that as it may, petitioner moved an

application to S.D.O. Maval sub-division Pune for restoration of the land. Petitioner moved this application on the basis that predecessor in title of petitioner (original owner) was holding less than 12 hecters of land. According to petitioner, this is statutory minimum provided by an amendment to the Maharashtra Private Forest (Acquisition) Act, 1975. It appears that the papers were forwarded for necessary recommendations and report to the Assistant Conservator of Forest and he submitted his report giving no objection to restore the said land to the concerned land holder in accordance with law. At the same time, respondent No.2 issued notice to the petitioner for enquiry under section 54, 54-A of Maharashtra Land Revenue Code. By this notice, petitioner was called upon to submit his written say or produce relevant documents on or before 17th June 2004.

5. The S.D.O. passed an order on petitioner’s application for restoration of the land on 25th June 2004. The land was restored to petitioner with all encumbrances and subject to following conditions:-

i) said land would continue to be a forest land;

ii) petitioner should obtain prior permission for carrying on any non forest activity from the Central Government in accordance with the provisions of Forest Conservation Act, 1980;

iii) it is only after the Central Govenment grants necessary approval that the petitioner would be placed in physical possession;

iv) In 7/12 extract of the said land in the column "Other Rights", an endorsement to the effect that the land is subject to Forest Conservation Act, 1980 be inserted;

6. Grievance of petitioner is that once the land was restored to him with the aforesaid conditions and that he was allowed to take physical possession subject to them then, there

was no question of his eviction from the same.

7. Although, the learned Counsel for petitioner has raised various contentions while challenging the impugned order, in our view, there is much substance in the objection of Mrs.Pawar, learned A.G.P. that petitioner cannot carry on any non- forest activity in the said land without prior permission and approval from the Central Government.

8. We are of the view that the order passed by the Assistant Conservator in this case requires no interference, save and except a modification that petitioner is not liable to be evicted from the said land once the same is restored to him. Petitioner can continue in possession of the said land subject to the terms and conditions of the restoration order. However, it is open to the authorities to remove any encroachment or prohibit any non forest activity in the said land as the land is admittedly a forest land and is being held subject to the provisions of Forest Conservation Act, 1980. Save and except modification, insofar

as possession of petitioner in respect of the said land, we are of the view that this is not a fit case for interference under Article 226 of the Constitution of India

9. In the light of the above following order:-

> Order passed by respondent No.2 on 28th June 2004 stands modified to the extent that respondent No.2 shall not evict petitioner from the said land but it will be open for him to proceed to remove encroachment or prohibit any non forest activity therein.

10. Rest of the order is maintained.

11. Before parting, we would like to sound a note of caution. Time and again, the Supreme Court and this Court has emphasised the aspect of conservation of forest. Mass destruction of forest has been noticed in the State. This Court is siezed of Public Interest Litigation as well as other proceedings in that behalf. This

petition is one more instance of the sorry and unsatisfactory state of affairs. Despite repeated directions, Revenue authorities are being permitted to deal with forest lands. There is absolutely no coordination between Revenue authorities and Authorities exercising powers under Indian Forest Act, Maharashtra Private Forest (Acquisition) Act and Forest Conservation Act. The State should take immediate steps to divest revenue authorities of all powers to deal with forest lands and such powers be exclusively conferred upon the authorities under the Forest Act and none else. This would prevent conflicting orders and directions. This would go in a long way in preserving and protecting the forest and environment. We hope that the State would take appropriate steps in this behalf as expeditiously as possible.

12. We are constrained to make the above observations as we have noticed that in this case also the S.D.O. who is revenue authority has passed order of restoration under section 22A of the Maharashtra Private Forest (Acquisition) Act, 1975. Although, he has imposed stringent

conditions and taken care by preventing non forest activity, we are of the view that it was not open for him to exercise power under the aforesaid statutory provision. It was his plain duty to leave the matter to the forest authorities. At the most, he could have implemented their orders. We leave the matter here. It is for the State to apply its mind and take appropriate decision in public interest.

13. Petition disposed of with no order as to costs.

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